

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7719 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DESAI TEJMAL RAMSING

Versus

MINISTRY OF DEFENCE  
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Appearance:

MR IS SUPEHIA for Petitioner

MR BB NAIK for Respondent No. 1, 2  
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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/01/2000

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of the respondent authority rejecting the claim of disability pension.

The petitioner joined the services in Army in Signals Regiment on 14.2.81, upon recruitment and appointment made by the respondent authority through the Ahmedabad Recruitment centre, in the cadre of radio mechanic after undergoing all the formalities for selection, including medical check up and fitness. It is also his case that on joining the Signal Regiment, he was sent for training at Goa, where, he had undergone rigorous basic physical training for the period commencing from February 1981 to August 1981 and that he, successfully, could complete the said training. He was, also, required to undergo the trade training, like that, Radio Mechanic, for a period of one and half year, at Goa. During the course of his training, he was required to be admitted in Command Hospital, at Pune in January 1983 for generalised epilepsy.

It is the case of the petitioner that he had put in total period of service in the Army of about two and half years and during the course of rigorous training, he became victim of disease of epilepsy. He, also, underwent medical treatment as indoor patient in the Army hospital for one and half month. On account of the epilepsy, he came to be discharged from the Army service on 19.7.83 by exercising his powers under Rule 13(3)III(iii) of the Army Rules, 1954, as a result of which the petitioner made representation to the respondent authority for disability pension. He was informed by letter dated 28.2.84 by the respondent No.2 that the disability pension case is likely to be finalised within a period of four months. According to the petitioner, he was informed about the rejection of his claim for disability pension by letter dated 31st August, 1988, copy, whereof, is produced as at, Annexure D to this petition.

It appears from the copy of the letter dated 31st August, 1988 sent by the respondent authority that the disability pension claimed had been finally rejected, on 15.5.84, on the ground that disability from injury the petitioner suffered during the course of military service was not attributable to the military service. It appears that the respondent authority has informed the petitioner by communication, dated 30.4.84 about the rejection of his claim for disability pension which, according to the petitioner, he never received it. He was informed about the rejection of the disability pension claim by the letter, dated 31.8.88 which promoted him to file this petition under Article 226 of the Constitution of India.

Unfortunately, the respondent authority has not filed any affidavit in reply. The version of the petitioner that

he became a victim of epilepsy during the course of rigorous training and that the disease was, therefore, attributable to military service has not been controverted. Even, none remained present when the matter was finally heard today. The facts stated in the petition which have remained uncontroverted would, clearly, go to indicate that the disease of epilepsy sustained by the petitioner within the period of two and half years after joining military service was in course of rigorous and vigorous training period, at Goa. How the authority has reached to the conclusion for rejecting the claim finding that epilepsy was not attributable to military service has not been highlighted.

In view of the following aspects which have remained unquestionable, it would be just and proper for the respondent authority to reconsider the case of the petitioner for the claim of disability pension and decide it by a speaking order.

- (1) The petitioner joined the military service in Signal Regiment, on 14.2.81, after having undergone the recruitment process, including the medical checkup and fitness.
- (2) He immediately, after joining, was sent for training at Goa where he underwent rigorous basic physical training from February 1981 to August, 1981.
- (3) The petitioner had also undergone trade training, like that, Radio Mechanic Training for a period of one and half years at Goa and before he could complete the second part of the training, as Radio Mechanic, at Goa, he, unfortunately, became victim of epilepsy, as a result of which, he was admitted in January 1983 to the Military Hospital at Pune.
- (4) Only on the ground of epilepsy, he was found not fit to continue in the service and came to be discharged from Army on 19.7.83 by the respondent authority exercising powers under the Army Rules, 1954.
- (5) The original order or copy thereof, rejecting the claim of disability pension has not been produced on record. The contention of the petitioner that the disease was attributable to military service, as he had to undergo extensive and exhaustive, rigorous and vigorous training for a long period

of two and half years, immediately, after joining the Army and therefore, epilepsy was attributable to military service has not been countered or questioned by filing an affidavit in reply.

In view of the aforesaid facts and circumstances and virtually no contest by the respondent authority, it would be just and proper to direct the respondent authority to reconsider the case of the petitioner for disability pension and since much time has elapsed in between, it is necessary to direct the respondent to reconsider and decide the case of disability pension claim of the petitioner within a period of three months from the date of receipt of the writ from this Court. In case of any adverse order, it will be open for the petitioner to pursue appropriate remedy.

In the circumstances, the petition is, partly, allowed with cost which is quantified at Rs.2,500/-. Rule is made absolute to that extent.

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(vjn)